

REMARKS

Claims 1-3, 14-19, 22-25, 27 and 28 remain pending in this application. Claims 1-28 are rejected. Claims 4-13, 20, 21 and 26 are cancelled herein. Claims 1-3, 14-19, 22-25, 27 and 28 are amended herein to address matters of form unrelated to substantive patentability issues.

Applicants herein traverse and respectfully request reconsideration of the rejection of the claims cited in the above-referenced Office Action.

Claims 2, 3/2, 5-6, 7/5, 8, 12-16, 18 and 19/18 are rejected as indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter of the invention as a result of informalities stated in the Office Action. The claims are amended to remove or correct the informalities noted in the Office Action. Claims 5-8, 12 and 13 are cancelled, rendering their rejections moot. Therefore, reconsideration of the rejection of claims 2, 3/2, 14-16, 18 and 19 and their allowance are earnestly requested.

Claims 1, 2, 4, 10-18, 20-23 and 27 are rejected as obvious over German Reference DE 198 49 266 (DE '266) in view of Japanese Reference JP 4-97064 (JP '064) under 35 U.S.C. §103(a). Claims 4, 10-13, 20, 21 and 26 are cancelled herein, rendering their rejections moot. The applicants herein respectfully traverse this rejection as pertaining to remaining claims 1, 2, 14-18, 22, 23 and 27. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the

combined references and the present invention must be obvious to one skilled in the art.

According to the recitations of claim 12, now incorporated into amended claim 1 (and analogous recitations added to method claim 17), the transverse and longitudinal (diagonal) rods are connected to the reinforcement of the sleepers. It is admitted in the Office Action that DE '266 does not disclose that longitudinal rods and transverse rods are electrically isolated from each other. Furthermore, it is not disclosed that at least one rod has an insulating coating. Finally, DE '266 does not disclose that the insulating coating is formed as a lower boom of a grid support of a sleeper. Due to these missing features, DE '266 does not provide one skilled in the art any suggestion towards the inventive fixed carriageway.

Applicants respectfully submit that one skilled in the art would not take into account document JP 4-97064 (JP '064), because this document appears to refer to a reinforced concrete structure which is intended for use in a nuclear power plant. There is no indication that JP '064 is related to a fixed carriageway for rail vehicles or useful in connection therewith. According to the abstract of this reference, an electrical insulation material can be used for reinforcing steel rods in order to prevent "electrical troubles" and "corrosion of reinforcing steel rods". It is unclear what is meant by "electrical troubles," and therefore such disclosure would be insufficient to provide the necessary guidance to provide the specific function and attendant advantages when applied as claimed in the present claims. Therefore, JP '064 cannot

be properly combined with DE '266 as suggested by the Examiner. The Examiner has simply combined two documents which are from two different technical fields, using applicants disclosure as a blueprint. Applicants respectfully submit that a person skilled in the art trying to solve a problem in the area of fixed carriageways would not take into consideration a document which refers to a reinforced concrete structure for a nuclear power plant. It is improper as a matter of law to use the claims presented as a blueprint to combine prior art references. *Ashland oil, Inc. v. Delta Resins & Refractories, Inc.* , 227 USPQ 657, 667 (CAFC 1985).

Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejections of claims 1, 2, 14-18, 22, 23 and 27 and their allowance are respectfully requested.

Claims 3, 19, 24, 25 and 28 are rejected as obvious over German Reference DE 198 49 266 in view of Japanese Reference JP 4-97064, and further in view of Padrun (US 4,617,775) under 35 U.S.C. §103(a). The applicants herein respectfully traverse this rejection.

Padrun, cited merely for its use of plastic clips 13, 14 to allegedly provide overlapping connection of reinforcing bars, fails to provide the teaching lacking in the combination of DE '22 and JP '064, as discussed above.

Thus, the combination of prior art references fails to teach or suggest all the claim limitations, as properly required for establishing a *prima facie* case of

obviousness. Therefore, reconsideration of the rejections of claims 3, 19, 24, 25 and 28 and their allowance are respectfully requested.

Claims 4-9 and 26 are rejected as obvious over German Reference DE 198 49 266 in view of Japanese Reference JP 4-97064, and further in view of Bechtel (US 5,371,991) under 35 U.S.C. §103(a). Claims 4-9 and 26 are cancelled herein, rendering these rejections moot.

No fee is believed due. If there is any fee due the USPTO is hereby authorized to charge such fee to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,
JORDAN AND HAMBURG LLP

By Frank J. Jordan by:
Frank J. Jordan
Reg. No. 20,456
Attorney for Applicants

and,

By Lawrence Wechsler
Lawrence Wechsler
Reg. No. 36,049
Attorney for Applicants

Jordan and Hamburg LLP
122 East 42nd Street
New York, New York 10168
(212) 986-2340